

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

STACEY SMITH,

Case No. 20-00224-AS

Plaintiff,

OPINION AND ORDER
OF SUMMARY DISPOSITION

vs

JOHN BEASON and CHRISTOPHER
BECKER,

Defendants.

At a session of said Court, held in the Kent County Courthouse
in the City of Grand Rapids, in said county on January 23, 2020

Present: HON. MARK A. TRUSOCK
Circuit Court Chief Judge

On the Court's own initiative, the Court being otherwise fully informed,
it is hereby ordered and adjudged as follows:

OPINION AND ORDER

Introduction

Plaintiff Stacy Smith ("Smith") filed this action against Defendants John Beason ("Beason") and Christopher Becker ("Becker"), seeking superintending control arising out of an alleged breach of a plea agreement.

It appears that this case is rooted in file 14-11012-FH wherein Smith entered a plea to two counts of Criminal Sexual Conduct in the Fourth Degree on June 1, 2015 in the 17th Circuit Court. He was sentenced to 24 months of probation on July 22, 2015.

Smith brought this case on January 8, 2020 naming his defense attorney and the prosecuting attorney from his criminal case as defendants. Smith's complaint in this file complains at length of the insufficiency of the evidence supporting his conviction. Smith also calls for the initiation of contempt proceedings against Beason and Becker for breach of the plea agreement. His motions to show cause are being concurrently denied with this order.

Standard of Review

MCR 2.116 does not expressly require a motion to order summary disposition; the court may do so sua sponte.¹ *Boulton* is premised upon MCR 2.116(I), which states:

- “(1) If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.
- (2) If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.”

However, a trial court may not sua sponte grant summary disposition in contravention of a party's due process rights.² In a civil proceeding, notice and a meaningful opportunity to be heard meet basic due process requirements.³ “Where a court considers an issue sua sponte, due process can be satisfied by affording a party with an opportunity for rehearing.”⁴ In addition, “any error by a court in granting summary disposition sua sponte without affording a party an adequate opportunity to brief an issue and present it to the court may be harmless under MCR 2.613(A), if the party is permitted to fully brief and present the argument in a motion for reconsideration.”⁵

Analysis

Smith's complaint contains several fundamental errors, each of which are irredeemably fatal to his case.

First, this Court does not have jurisdiction to exercise superintending control over itself. “[T]he circuit court [has] jurisdiction to issue superintending control orders to lower courts or tribunals.”⁶ The 17th Circuit Court is not a lower court than itself. Petitions for superintending control seeking to compel the performance of a party's legal duty in the circuit court would be properly filed in the Court of Appeals. This Court lacks jurisdiction to hear Smith's case for superintending control.

Next, Smith cannot pursue superintending control in the absence of other adequate legal remedies.⁷ Availability of an appeal or another remedy will defeat a writ of superintending control.⁸ Smith's opportunities to appeal have been foreclosed by

¹ *Boulton v Fenton Twp*, 272 Mich App 456, 462-463 (2006).

² *Al-Maliki v LaGrant*, 286 Mich App 483, 489 (2009). See also *Lamkin v Hamburg Twp Bd of Trustees*, 318 Mich App 546, 549-551 (2017).

³ *Al-Maliki*, 286 Mich App at 485.

⁴ *Id.* at 485-486.

⁵ *Al-Maliki*, 286 Mich App at 486.

⁶ MCR 3.302(D)(1).

⁷ *In re Gosnell*, 234 Mich App 326, 341 (1999).

⁸ MCR 3.302(B); MCR 3.302(D)(2).

expiration of the deadlines. However, the alleged defects Smith complains of could be properly addressed by a motion for relief from judgment filed pursuant to MCR 6.500 et seq. In light of this alternative remedy, superintending control is unwarranted.

Turning to the substance of Smith's petition, Smith fails to support his petition with evidence that his counsel or the prosecutor in his criminal case failed to perform a clear legal duty. Instead, Smith complains at length about the proposed evidence against him and that he entered his plea to avoid trial due to his fear of pervasive racism. Smith's disagreement with the allegations and his complaints concerning the proposed evidence are not sufficient to support the conclusion that a party to his criminal case failed to perform a clear legal duty; a conclusion which is fundamentally necessary to support his petition for superintending control. Accordingly, Smith has failed to state a claim upon which relief may be granted.

Finally, the Court notes that Christopher Becker and John Beason are improperly named as defendants. Only the plaintiff's name may appear in the title of an action for superintending control.⁹ Accordingly, named defendants Christopher Becker and John Beason are stricken from the caption of this case as their inclusion is not drawn in conformity with the court rules.¹⁰ Henceforth, this case is captioned *In Re Stacey Smith*.

Judgment

Accordingly, Summary Disposition is entered against Plaintiff Smith pursuant to MCR 2.116(C)(4) for lack of jurisdiction and MCR 2.116(C)(8) for Plaintiff's failure to state a claim upon which relief may be granted for the foregoing reasons.

This order resolves the last pending claim and closes the case.

Dated: January 23, 2020

Mark A. Trusock

MARK A. TRUSOCK (P38156)
Circuit Court Chief Judge

17th CIRCUIT COURT
ATTEST: A true copy



TRUE COPY
I do hereby certify and return that I served a copy of the above order upon the parties by placing a copy of said notice in a sealed envelope, addressed to each, and giving said envelope to the Professional Courier Service for delivery or with full postage prepaid thereon and placing said envelope in the United States Mail at Grand Rapids, Michigan.

Dated: January 23, 2020

RENEE PEGG, Court Clerk

⁹ MCR 3.302(E)(1).

¹⁰ MCR 2.115(B).

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

STACEY SMITH,

Case No. 20-00224-AS

Plaintiff,

OPINION AND ORDER

RE: PLAINTIFF'S

vs

MOTIONS TO SHOW CAUSE

JOHN BEASON and CHRISTOPHER
BECKER,

Defendants.

At a session of said Court, held in the Kent County Courthouse
in the City of Grand Rapids, in said county on January 23, 2020

Present: HON. MARK A. TRUSOCK
Circuit Court Chief Judge

Upon Plaintiff's Motion, and the Court being otherwise fully informed,
it is hereby ordered and adjudged as follows:

OPINION AND ORDER

Plaintiff filed motions to show cause against John Beason and Christopher Becker on or about January 6, 2020. Plaintiff's motions consist merely of SCAO form MC 230. MCR 3.606(A) allows the court to initiate contempt proceedings only "on a proper showing on ex parte motion *supported by affidavits*." Plaintiff has declined to attach an affidavit explaining the admissible facts supporting his motion. Likewise, there are no records available and apparent to the Court justifying the initiation of contempt proceedings of which the Court could take judicial notice.¹ Consequently, there are no grounds which would justify the initiation of contempt proceedings.

Accordingly, Plaintiff Smith's Motions to Show Cause filed against John Beason and Christopher Becker are **DENIED**.

Dated: January 23, 2020

Mark A. Trusock

MARK A. TRUSOCK (P38156)
Circuit Court Chief Judge

¹ *In re Albert*, 383 Mich 722, 724 (1970).

ATTEST: ^{17th CIRCUIT COURT} A true copy



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